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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/556,481	11/14/2005	Christopher Malyszewicz	76241.010500	1232

7590  
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EXAMINER
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HARDEE, JOHN R

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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11/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/556,481	<b>Applicant(s)</b> MALYSZEWICZ, CHRISTOPHER	
	<b>Examiner</b> JOHN R. HARDEE	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 35,40,41,54,55,64,66 and 68-80 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35,40,41,54,55,64,66 and 68-80 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10022009</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 68 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has recited “a method for manufacturing a composition” which ends with “wherein, after the combining step, the solution of claim 35 is provided.” Are the “solution” at the end of the claim and the “composition” at the beginning of the claim the same? This is particularly problematic since applicant has replaced “composition” at the end of the claim with “solution”, suggesting that they are not intended to be the same. Is “provided” a method step?

### ***Claim Rejections - 35 USC § 103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 35, 40, 41, 54, 55, 64, 66 and 68-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eggensperger et al., US 5,276,047 in view of Ofusu-Asante et al., US 6,387,856. . The Eggensperger reference discloses the use of alkylated polyamines as shown in the abstract for inclusion in surfactants, detergents and cleansing and polishing agents. R is a straight or branched alkyl or alkylene radical of 10-14 carbons, n and m are non-zero, and  $n+m = 4-12$ . Use of animal or vegetable

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feedstocks comprising a mixture of chain lengths is notoriously common in the surfactant field. The person of ordinary skill in the surfactant art would fairly infer that R could be a mixture of chain lengths of 10-14 carbons. Note the use of lauryl dipropylene triamine in the examples. This is applicant's claimed amine, wherein R is a linear 12-carbon chain. Suitable solvents include low molecular weight univalent (monoprotic) alcohols (col. 2, lines 6+) and glycol ethers, making the use of mixtures of such alcohols and glycol ethers obvious. Determination of the solvent-effective amount of disclosed solvents amounts to ordinary experimentation, as does determination of the cleaning-effective amount of the disclosed cleaner. The solvents act as wetting agents, and the amine has surfactant properties. The reference discloses dilution of the compositions for addition to other compositions (col. 3, lines 19+). Determination of the cleaning-effective amount of a disclosed cleaning agent, where dilution is disclosed, amounts to routine optimization. Addition of a halogen is not disclosed.

Ofusu-Asante teaches that antimicrobial compositions for manual dishwashing may comprise 0.001-2% of iodine atoms complexed with amphoteric surfactant (abstract). The compositions are disclosed as stable at a pH of 7-10, implying the use of a buffer to stabilize pH. Regarding the addition of antioxidants, see col. 11, line 51. It would have been obvious at the time that the invention was made to incorporate the iodine-amphoteric complex of Ofusu-Asante into the hard surface cleaning compositions of Eggensperger, because Eggensperger discloses at col. 3, lines 5-6 that other disinfectants may be added to the compositions disclosed therein, and Ofusu-Asante teaches iodine-amphoteric complexes for use in hard surface cleaning compositions

such as manual dishwashing detergents. Regarding claim 68, the claim is drawn to simple mixing, which is afforded little patentable weight. Language drawn to anti-viral, anti-fungal, etc. compositions, as well as binding of DNA and encapsulation recite inherent properties and intended use and are afforded little patentable weight.

### ***Response to Arguments***

5. Applicant's arguments filed October 2, 2009 have been fully considered but they are not persuasive. Applicant's amendment to "consisting essentially" scope does not rule out the presence of BIT. The references are drawn to antimicrobial cleaners, as are applicant's claims. The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not *materially* affect the *basic* and *novel* characteristic(s)" of the claimed invention. *In re Herz*, 537F.2d 549, 551-552, 190 USPQ 461, 463 (CCPA 1976). When applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of", applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. *In re De Lajarte*, 337F.2d 870, 143 USPQ 256 (CCPA 1964). See also *ex Parte Hoffman*, 12 USPQ2d 1061, 1063-64 (Bd. Pat. App. & Inter. 1989). Applicants may define the scope of "consisting essentially" by making it clear in the specification what is regarded as constituting a material change. See *PPG Indus., Inc. V. Guardian Indus. Corp* 156F3d 1351, 1355, 48USPQ2d 1351, 1355 (Fed Cir. 1998).

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Mr. Harold Pyon, may be reached at (571) 272-1498.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/John R. Hardee/  
Primary Examiner  
November 5, 2009